



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

ELP

Docket No: 4848-00

20 December 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 28 February 1955 for four years at age 17. The record reflects that you were advanced to PFC (E-2) and served for a year without incident. However, during the four-month period from February to May 1956 you received three nonjudicial punishments (NJP) for operating a vehicle in a reckless manner, a three-hour period of unauthorized absence (UA), and absence from your appointed place of duty.

On 12 October 1956 you were convicted by a general court-martial of UA from 23 July to 6 September 1956, a period of about 44 days. You were sentenced to confinement at hard labor for one year, total forfeitures, and a bad conduct discharge. Thereafter, the convening authority approved the sentence but suspended the bad conduct discharge for the period of confinement and six months thereafter. The Navy Board of Review affirmed the findings and the sentence on 15 January 1957.

On 21 March 1958 you were convicted by a special court-martial of assault and battery, and drunk on duty. You were sentenced to confinement at hard labor for six months, forfeitures of \$60 per month, reduction in rank to PVT (E-1), and a bad conduct discharge. On 2 April 1958 the convening authority approved only so much of the sentence that provided for confinement at hard labor, forfeitures of \$60 per month for six months, and the reduction in rank. Thereafter, the supervisory authority further reduced the confinement and forfeitures to three months.

The record reflects that you were subsequently advanced to LCPL (E-3) and served for more than 12 months without incident. However, during the three month period from April to June 1959 you were convicted by a summary court-martial and received NJP for disrespect and being drunk in uniform. As a result of the NJP, you received a suspended reduction in rank to PVT which was vacated on 14 August 1959 for fighting at the enlisted mens' club.

On 9 September 1959 you were notified that discharge under other than honorable conditions was being recommended by reason of unfitness due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights and elected to present your case to a board of officers. However, on 1 October 1959, you waived your right to appear before a board of officers and submitted a statement to the effect that your misconduct was spread over a long period of time, and it did not warrant an undesirable discharge with only three months remaining on your enlistment. On 2 October 1959 the discharge authority directed an undesirable discharge by reason of unfitness. You were so discharged on 20 October 1959.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been more than 41 years since you were discharged. The Board noted your contention that all of your misconduct was alcohol related and that had there been some type of rehabilitation, you might have been able to adjust to the military lifestyle. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of four NJPs and convictions by summary, special, and general courts-martial. The Board believed that you received extraordinary consideration when, on two occasions, a bad conduct discharge was either suspended or not approved, giving you an opportunity to earn a discharge under honorable conditions. The Board noted that after your special court-martial conviction, you served for more than a year without incident and were meritoriously advanced to LCPL. This demonstrated to the Board that you had the capability to successfully complete your

enlistment. However, your misconduct continued. Alcohol abuse may be considered a mitigating factor but does not excuse misconduct. Your contention that you would have successfully completed your enlistment had rehabilitation been available is speculative, at best, at this late date. The Board concluded that you were guilty of too much misconduct to warrant recharacterization to honorable or under honorable conditions. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director